

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION 1

HILL RHF HOUSING PARTNERS, L.P.;  
and OLIVE RHF HOUSING  
PARTNERS, L.P.,

Plaintiffs/Petitioners and  
Appellants,

v.

CITY OF LOS ANGELES;  
DOWNTOWN CENTER BUSINESS  
IMPROVEMENT DISTRICT; and  
DOWNTOWN CENTER BUSINESS  
IMPROVEMENT DISTRICT  
MANAGEMENT CORPORATION,

Defendants/Respondents and  
Respondents.

Court of Appeal No.  
B288356

Los Angeles County Superior Court Case No. BS138416  
Hon. Amy D. Hogue, Department 86, (213) 830-0786  
Judge of the Superior Court

**APPENDIX IN SUPPORT OF APPELLANTS' OPENING BRIEF  
VOLUME 3 OF 4 (PAGES 406 – 655)**

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## CHRONOLOGICAL INDEX OF DOCUMENTS

<b>Tab No.</b>	<b>Document Name</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page</b>
1	Summons and Petition for Peremptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief	7/18/12	1	1
2	Answer to Verified Petition from City of Los Angeles	10/30/12	1	188
3	Amendment to Complaint Doe 1: Downtown Center Business Improvement District, a special assessment district in the City of Los Angeles	11/08/12	1	198
4	Amendment to Complaint Doe 2: Downtown Center Business Improvement District Management Corporation, a California Corporation	11/08/12	1	199
5	Notice of Settlement of Entire Case	1/04/13	1	200
6	Request for Dismissal with Prejudice with the Court to Retain Jurisdiction to Enforce Settlement per C.C.P Section 664.6	3/01/13	1	202
7	Plaintiffs' Notice of Motion and Motion to Enter Judgment Pursuant to C.C.P. Section 664.6 and Grant Attorney's Fees and Costs of \$7,150.00, Declarations of Deborah J. Stouff, Kenny C. Brooks, and Stephen L. Raucher in Support Thereof	1/04/18	2	205

<b>Tab No.</b>	<b>Document Name</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page</b>
8	[Proposed] Order to Grant Motion to Enforce Settlement Agreement and Enter Judgment Pursuant to C.C.P. Section 664.6	1/04/18	2	397
9	[Proposed] Judgment Pursuant to C.C.P. Section 664.6	1/04/18	2	399
10	Proof of Service of Plaintiffs Notice of Motion and Motion to Enter Judgment Pursuant to C.C.P Section 664.6	1/04/18	2	401
11	Proof of Personal Service of Plaintiffs' Notice of Motion and Motion to Enter Judgment Pursuant to C.C.P. Section 664.6	1/10/18	2	404
12	Opposition to Motion to Enter Judgment; Request for Attorney's Fees	1/17/18	3	406
13	Declaration of Daniel M. Whitley in Opposition to Motion to Enter Judgment	1/17/18	3	424
14	Request for Judicial Notice in Support of Opposition to Motion to Enter Judgment	1/17/18	4	656
15	Plaintiffs'/Petitioners' Reply in Support of Motion to Enter Judgment Pursuant to C.C.P. Section 664.6 and Grant Attorney's Fees and Costs of \$7,150.00; Declaration of Hana S. Kim	1/24/18	4	659

<b>Tab No.</b>	<b>Document Name</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page</b>
16	Order Denying Motion to Enter Judgment Enforcing Settlement Agreement	1/31/18	4	674
17	Notice of Ruling Re: Motion to Enter Judgment	2/01/18	4	681
18	Notice of Appeal	2/23/18	4	691
19	Notice of Filing of Notice of Appeal	2/26/18	4	693
20	Notice Designating Record on Appeal	3/01/18	4	694
21	Register of Actions	3/02/18	4	700

## ALPHABETICAL INDEX OF DOCUMENTS

<b>Tab No.</b>	<b>Document Name</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page</b>
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**PROOF OF SERVICE BY E-MAIL**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action, my business address is 12400 Wilshire Boulevard, Suite 800, Los Angeles, California 90025.

On June 18, 2018, I served the foregoing document described as:

**APPENDIX IN SUPPORT OF APPELLANTS' OPENING BRIEF  
VOLUME 3 OF 4 (PAGES 406 – 655)**

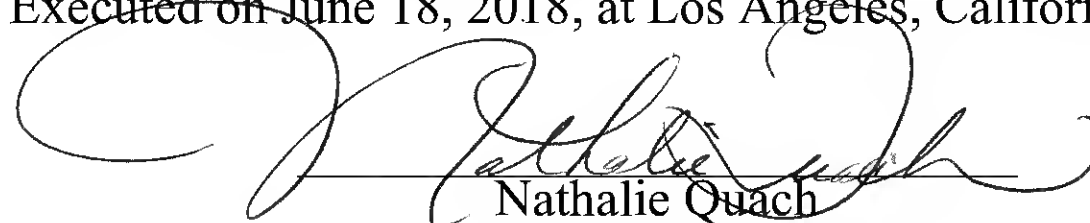
on all interested parties in this action by serving a true copy of the above described document in the following manner:

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I am familiar with the office practice of Reuben Raucher & Blum for collecting and processing documents for delivery by E-Mail. Under that practice, documents and email by Reuben Raucher & Blum personnel responsible for emailing are transmitted on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 18, 2018, at Los Angeles, California.

  
Nathalie Quach



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No Fee Pur. Gov't Code 6103

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

13 HILL RHF HOUSING PARTNERS, L.P.;  
14 OLIVE RHF HOUSING PARTNER, L.P.,

15 Petitioners/Plaintiffs,

16 vs.

17 CITY OF LOS ANGELES *et al*,

18 Respondents/Defendants.

CASE NO.: BS138416

**OPPOSITION TO MOTION TO ENTER  
JUDGMENT; REQUEST FOR  
ATTORNEYS FEES**

Date: January 31, 2018  
Time: 9:30 a.m.  
Place: Dept. 86

Complaint filed: July 18, 2012

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## TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES .....	1
I. RELEVANT FACTS .....	3
A. HISTORY OF THE VARIOUS DCBIDS. ....	3
B. THE LITIGATION AND SETTLEMENT.....	4
II. THE SETTLEMENT AGREEMENT ONLY APPLIED TO THE 2013 DCBID, WHICH HAS EXPIRED.....	4
A. THE SETTLEMENT AGREEMENT PROVIDES ALL THE TERMS NEEDED FOR ANY REASONABLE PERSON TO KNOW IT EXPIRED WITH THE 2013 DCBID. ....	5
B. WHETHER THE 2018 DCBID “RENEWS” THE 2013 DCBID IS IRRELEVANT. ....	7
C. THE SETTLEMENT AGREEMENT WAS JOINTLY DRAFTED AND CANNOT BE CONSTRUED AGAINST THE CITY.....	9
D. IF PETITIONERS ARE CORRECT THAT THE SETTLEMENT AGREEMENT MEANT TO CONTINUE AFTER THE EXPIRATION OF THE 2013 DCBID, THE COURT SHOULD ENTER JUDGMENT IN BS170127 FOR THE CITY.....	10
III. THE “CURRENT FORMULATION” OF THE 2018 DCBID IS IRRELEVANT AND IN ANY EVENT DEVIATES FROM THE 2013 DCBID. ....	11
A. THE “CURRENT FORMULATION” LANGUAGE ONLY APPLIES TO THE 2013 DCBID.....	11
B. THE 2018 DCBID DOES NOT USE THE “CURRENT FORMULATION” OF THE 2013 DCBID.....	13
IV. THE CITY IS ENTITLED TO ATTORNEYS FEES.....	14
V. CONCLUSION. ....	14

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Petitioners Hill RHF Housing Partners, L.P., and Olive RHF Housing Partners, L.P.  
3 (“Petitioners”) seek to force the City of Los Angeles (“City” or “Respondent”) to pay assessments for  
4 the Downtown Center Business Improvement District that will begin operations on January 1, 2018  
5 (the “2018 DCBID”). The 2018 DCBID is a special assessment district established by City Council  
6 ordinance on June 7, 2017, to provide special services to and for property owners in the DCBID area.  
7 The 2018 DCBID will assess property owners for the costs of these services. Petitioners filed a  
8 lawsuit (BS170127) to contest this DCBID, but also contend the City is obliged to pay such  
9 assessments under the settlement of this matter, Case No. BS138416 (the “earlier litigation”).

10 The earlier litigation addresses the Downtown Center Business Improvement District that  
11 began operations on January 1, 2013 (the “2013 DCBID”). The 2013 DCBID was established on  
12 June 19, 2012, and provided similar services to those the 2018 DCBID will provide. In the  
13 Settlement Agreement resolving this earlier litigation the City agreed to pay the assessments relating  
14 to “the DCBID adopted by ordinance of the City Council on June 19, 2012.” (Exhibit 1, Settlement  
15 Agreement and Release, at ¶¶ 2 and 6.) This raises two issues: (1) whether the Settlement Agreement  
16 is ambiguous and if so how to interpret it; and (2) whether the 2018 DCBID’s assessments fall within  
17 the meaning of the assessments subject to the Settlement Agreement.

18 The Settlement Agreement itself seems clear and unambiguous. It concerns the “DCBID,  
19 adopted by ordinance of the City Council on June 19, 2012.” (Settlement Agreement at ¶¶ 2 and 6.)  
20 It required the City to satisfy assessments “set forth in an Engineer’s Report and a District  
21 Management Plan which are attached to the Petition for Peremptory Writ of Mandate . . . on which  
22 this matter is based [i.e., the 2012 Engineer’s Report (Exhibit 8) and 2012 Management District Plan  
23 (Exhibit F)].” (Settlement Agreement at ¶ 2.) The City agreed to satisfy assessments made with  
24 respect to “the DCBID.” (Settlement Agreement Term 1(a)(ii).) These terms do not seem ambiguous  
25 or to require interpretation by extrinsic evidence.

26 As for the second issue, Petitioners bear the burden of proving that the assessments for the  
27 2018 DCBID fall within the settlement agreement and utterly fail. The 2018 DCBID was adopted by  
28 City Council on June 7, 2017, and so is not the “DCBID” addressed by the Settlement Agreement.

1 (Exhibit G). Likewise, the 2018 DCBID's assessments are not set forth in the Engineer's Report or  
2 the District Management plan attached to the Petitioner for Peremptory Writ, which address only  
3 assessments between January 1, 2013, and December 31, 2017. (Exhibits 8 and F.) Therefore,  
4 Petitioners are not entitled to any relief; the agreement does not apply to assessments by the 2018  
5 DCBID.

6 Petitioners argue that agreement should be construed to apply to the 2018 DCBID because the  
7 2018 DCBID only "renews" the earlier DCBID, which "continues" in its "current formulation." But  
8 this language, from Paragraph Five of the Settlement Agreement, is completely irrelevant. The 2018  
9 DCBID was **not** adopted by City ordinance on June 19, 2012, regardless of whether it "renewed" the  
10 2013 DCBID. Thus, the 2018 DCBID's "formulation" matters not at all to Respondent's obligations  
11 under the Settlement Agreement. Moreover, the Court would have to ignore the language regarding  
12 the 2012 Engineer's Report and District Plan to resolve this in Petitioner's favor.

13 Furthermore, the evidence shows that the 2018 DCBID does not "continue" or "renew" the  
14 2013 DCBID, but the 1997 DCBID. The 2018 DCBID "renews" and "continues" a line of DCBIDs  
15 that started no later than 1997, should one look at these BIDs as "continuing" the way Petitioners do.  
16 By carving out the DCBID adopted on June 19, 2012, the Settlement Agreement explicitly, clearly,  
17 and unambiguously designated only one of the many past and future DCBIDS. In any event,  
18 "renewed" BIDS are completely new and distinct entities from the expired BID.

19 Petitioners' other arguments lead nowhere. Petitioners argue that the 2013 DCBID continues  
20 in its "current formulation" because its services continue, but that is irrelevant. The City's obligation  
21 to pay Petitioners' assessments lasts only so long as does the DCBID adopted by ordinance on June  
22 19, 2012. The 2018 DCBID's formulation cannot change the fact that it was **not** adopted by Council  
23 on June 19, 2012, and that its assessments were **not** described in the 2012 District Plan and the 2012  
24 Engineer's Report.

25 Similarly, Petitioners argue for a number of reasons that the agreement is ambiguous and an  
26 "objectively reasonable" person would think the "current formulation" language meant that the City  
27 agreed to pay DCBID assessments forever. This strains credibility even if the agreement did not  
28 explicitly state otherwise. If so, the Settlement Agreement would have provided far more relief than

1 Petitioners possibly could have obtained from litigation. No reasonable person would think that the  
2 City would concede not just the issues set forth in the earlier lawsuit, but that no BID could ever  
3 assess Petitioners' property. In any event, the 2018 DCBID does use a different formulation than the  
4 2013 DCBID, and so this language provides no help to Petitioners.

5 The Settlement Agreement should be applied as it was written. The City agreed to pay  
6 Petitioners' assessments from the 2013 DCBID and no more, and has fully satisfied those obligations.  
7 Moreover, the City is entitled to its attorneys fees and costs of at least \$16,406.25 in this matter under  
8 Section (h) of the Settlement Agreement because it will be the prevailing party in this matter.

9 **I. RELEVANT FACTS**

10 **A. HISTORY OF THE VARIOUS DCBIDS.**

11 A Downtown Center Business Improvement District has existed since at least 1997, when one  
12 was created by an ordinance adopted by the City Council on July 22, 1997. (*See* Exhibit A to  
13 Declaration of Daniel M. Whitley.) That 1997 DCBID continued operations under its initial five-  
14 year term until its successor was created by the City Council, and something named the DCBID has  
15 continued providing similar services since 1997. (Declaration of Daniel M. Whitley, ¶ 3.) On or  
16 about July 8, 2006, the predecessor to the 2013 DCBID was created after an ordinance to that effect  
17 was adopted by the City Council. (*See* Exhibit D to Declaration of Daniel M. Whitley.) On June 19,  
18 2012, the 2013 DCBID itself was adopted by ordinance of the City Council. (*See* Exhibit 1, Recital  
19 ¶¶ 1-5.) On or about June 7, 2017, the 2018 DCBID was adopted by ordinance of the City Council.  
20 (*See* Exhibit F). All of these BIDS were referred to as "renewals" of the Downtown Center Business  
21 Improvement District. (*See* Exhibits B, C, E, and G.)

22 All of the DCBIDs have provided similar services (i.e., safety, cleaning, and district  
23 identity/marketing services, as well as administrative upkeep), and until the most recent had similar  
24 formulations and methodologies for assessing the costs of special benefits. (*See* Exhibits 1, 3, A, B  
25 and C.) The 2018 DCBID determined and calculated a general benefit that will not be paid by  
26 assessees. (*See* Exhibit 9). The City itself will be paying for the amounts determined to be general  
27 benefits, with only the costs of special benefits paid by the assessed properties.  
28

1                   **B.       THE LITIGATION AND SETTLEMENT.**

2           Petitioners filed suit seeking various relief related to the 2013 DCBID. Petitioners made four  
3 basic claims: (1) the BID failed to show how various properties benefited from the BID's services;  
4 (2) the BID failed to determine a general benefit from its services; (3) the BID made assessments  
5 based on its budget, not the cost of the services; and (4) Petitioners deserved special treatment  
6 because they were a non-profit business. (*See* Motion at p.1-2.) The parties agreed to settle the  
7 matter according to the terms of a Settlement Agreement. (Exhibit 1.) In this agreement the City  
8 agreed to make Petitioners whole for any assessments made by the 2013 DCBID. (Exhibit 1.) The  
9 City complied with all the terms of the agreement throughout the life of the 2013 DCBID.  
10 (Declaration of Daniel M. Whitley at ¶ 2.)

11                   **II.       THE SETTLEMENT AGREEMENT ONLY APPLIED TO THE 2013 DCBID,**  
12                   **WHICH HAS EXPIRED.**

13           “Contracts must be considered as whole, each part thereof being construed in light of every  
14 other part and intention being gathered from whole instrument, taking it by four corners; and every  
15 part thereof should be given some effect.” (*Hunt v. United Bank & Trust Co.* (Cal. 1930), 210 Cal.  
16 108, 114.) Here, the “four corners” of the Settlement Agreement limit the City's obligations only to  
17 assessments relating to the DCBID “adopted by ordinance of the City Council on June 19, 2012.”  
18 (Settlement Agreement at ¶ 2 and 6.) The only assessments the City must pay are those “set forth in  
19 an Engineer's Report and a Management District Plan” attached to the Petition in this matter, i.e., the  
20 2012 Engineer's Report and the 2012 District Plan. (Settlement Agreement at ¶ 2 and Term 1(a)(ii).)

21           These terms are clear and unambiguous. Thus, no extrinsic evidence is needed to interpret the  
22 meaning of this agreement, although evidence might be needed to show whether any particular  
23 assessment was subject to the agreement. And here the evidence shows that the City has satisfied all  
24 such assessments, that no more such assessments can possibly be made, and that the City has no further  
25 obligations under the agreement.

26           Paragraphs 1, 2 and 6 of the recitals and Settlement Term 1(a)(ii) require the City only to  
27 make payments with respect to assessments by the DCBID adopted by ordinance on June 19, 2012.  
28 The only such DCBID is the 2013 DCBID. (*See* Exhibit 1, Settlement Agreement at ¶ 2; Exhibits 1



1 and G). These assessments must also be set forth in the 2012 Engineer's Report and the 2012 District  
2 Plan. (See Exhibit 1 at ¶ 2; Exhibit 8 at p. 1; Exhibit F at p. 5.).

3 Thus, the terms of the agreement are clear. To meet these terms Petitioners must prove that  
4 the assessments they want paid are: (1) made by the DCBID adopted by Council on June 19, 2012;  
5 and (2) set forth in the 2012 Engineer's Report and District Plan. They cannot do so. The 2018  
6 DCBID was adopted on June 7, 2017, and the assessments are not set forth in the 2012 Engineer's  
7 Report and the 2012 District Plan.

8 Petitioners sidestep these terms and instead argue that other language, relating to the "current  
9 formulation" of the DCBID, means that the City is bound to pay assessments relating to a different  
10 DCBID, one adopted by ordinance on June 7, 2017, and to pay assessments that were not discussed at  
11 all in the 2012 Engineer's Report and the 2012 District Plan. Instead of applying the terms of the  
12 agreement, Petitioners argue that this clause, standing alone, makes the Settlement Agreement bind  
13 the City "for so long as the Plaintiffs remain the owners of these properties." No ambiguity in the  
14 agreement could be construed such that the City is obliged to pay such assessments forever. This is  
15 well beyond the scope of the Settlement Agreement and outside of any reasonable interpretation of  
16 the agreement as written. The Court should rule in favor of the City.

17 **A. THE SETTLEMENT AGREEMENT PROVIDES ALL THE TERMS**  
18 **NEEDED FOR ANY REASONABLE PERSON TO KNOW IT EXPIRED**  
19 **WITH THE 2013 DCBID.**

20 Petitioners argue that they "reasonably" thought that the Settlement Agreement would last  
21 forever despite explicit language to the contrary. Assuming arguendo that the language limiting the  
22 Settlement Agreement to the 2013 DCBID is in some way ambiguous, this reading is not reasonable.

23 At the time of the agreement both Petitioners and the City were simply trying to find a way to  
24 satisfy Petitioners and the many members of the 2013 DCBID who desperately wanted the BID  
25 services. As Petitioners concede the parties never discussed future events such as the 2018 DCBID.  
26 Instead, the parties focused on dealing with the problem before them: the 2013 DCBID. Here, the  
27 only reasonable way to satisfy all parties was to pay the 2013 DCBID assessments during the course  
28 of its lifetime. Nothing more was contemplated or expressed in the Settlement Agreement because

1 nothing more was at issue. Because the 2013 DCBID ended on December 31, 2017, neither party  
2 had any need or interest to further discuss what would happen after December 31, 2017. Such things  
3 were not raised by the litigation and were not at issue.

4 Moreover, such a “reasonable belief” requires thinking that the Settlement Agreement  
5 provided for relief that litigation could not possibly provide. The court could have provided refunds  
6 of assessments from the 2013 DCBID, or disestablished the 2013 DCBID, or altered the DCBID by  
7 court order, but Petitioners could not have received any relief regarding assessments after December  
8 31, 2017. Not only did they fail to seek any such relief, but because such assessments would be made  
9 by an as-yet uncreated BID there was no ongoing controversy for any court to address.

10 Thus, Petitioners wrongly claim that they reasonably believed the Settlement Agreement  
11 lacked an “explicit” end date. The end date is explicit: the expiration of the DCBID “adopted by City  
12 council on June 19, 2012.” As Petitioners acknowledge, this DCBID ended by its terms on  
13 December 31, 2017, and both parties were well aware of that fact. The agreement only addressed  
14 assessments that would end in 2017, as set forth in the Engineer’s Report and the District Plan. No  
15 reasonable person would think the agreement lasted in perpetuity under such circumstances.

16 Moreover, the City did indeed “broach the subject” of an “end date” as the Settlement  
17 Agreement was limited explicitly to the BID adopted by City Council on June 19, 2012, and to  
18 assessments that were described as ending with 2017. Petitioners appear to argue that the agreement  
19 should not only have explicitly applied to assessments that ended by definition in 2017, and to a  
20 DCBID that “all parties” knew ended in 2017, but also should have explicitly said that the agreement  
21 “ended” in 2017. Such language seems superfluous.

22 Similarly, Petitioners argue that they “reasonably” thought the agreement lasted forever  
23 because it addressed their claim that “tax-exempt” entities were immune to BID assessments. If so  
24 the agreement should at least hint at this. But instead the Settlement Agreement lasts “so long as  
25 Petitioners remain the owners of these properties” during the five-year term of the 2013 DCBID.  
26 (Settlement Agreement at ¶ 5.) Thus, under Petitioners’ reading of the Settlement Agreement the  
27 City’s obligations would last forever regardless of whether Petitioners operated as “tax exempt”  
28 entities or the lifetime of the 2013 DCBID. No reasonable person would think that the Settlement



1 Agreement protected Petitioners' interests as "tax-exempt" entities when the Settlement Agreement  
2 ignores that issue completely.

3 In any event, Petitioners are objectively wrong to think that this issue could have been settled  
4 forever in this litigation. Article XIIID requires that **all** special benefits be assessed, regardless of  
5 whether the assessee performs non-profit or for-profit activities. This determination is unique to each  
6 BID and cannot be determined for all time by challenging a single BID.

7 Thus, the Settlement Agreement (as Respondent reads it) gave Petitioners the maximum relief  
8 a court could have provided: freedom from assessments relating to the 2013 DCBID. It clearly and  
9 unambiguously applies only to the 2013 DCBID. Petitioners could not and almost certainly did not  
10 think that the agreement ran endlessly.

11 **B. WHETHER THE 2018 DCBID "RENEWS" THE 2013 DCBID IS**  
12 **IRRELEVANT.**

13 Petitioners argue that the 2018 DCBID merely "renews" the 2013 DCBID, and so "continues"  
14 the 2013 DCBID, and thus is not a "new" BID. They are wrong on what is "continuing" here, but the  
15 entire argument is completely irrelevant as the Settlement Agreement applies only to the DCBID  
16 "adopted" on June 19, 2012. Regardless of whether the 2018 DCBID "renews" the expired BID, the  
17 2018 DCBID was not "adopted" on June 19, 2012.

18 Although extrinsic evidence is not needed to determine the meaning of the Settlement  
19 Agreement, it is needed to show that the City is not obliged to pay assessments relating to the 2018  
20 DCIBD. The 2018 DCBID was adopted by City Council on June 7, 2017. (Declaration of Daniel M.  
21 Whitley, ¶ 9.) "Renewed" BIDs must be adopted by motion of the City Council just like BIDs  
22 completely unrelated to any other BID. (Streets and Highways Code § 36660). Thus, the City's  
23 obligations under the agreement turn on when the DCBID is "adopted" by City Council, not whether  
24 the BID is "renewed." This ends the analysis, as the 2018 DCBID (adopted on June 7, 2017) literally  
25 does not fall within the terms of the Settlement Agreement.

26 Moreover, "renewed" BIDS do not "continue" in the sense that Petitioners use the word, that  
27 they are a single entity that has existed for more than 20 years. The 2018 DCBID is the latest in a  
28 long line of DCBIDs, starting no later than 1997. (See Exhibit A). A DCBID has continued

1 providing services to the present. (See Exhibits A through F.) When formed, the successor DCBIDs  
2 were all referred to as a “renewal” of the expiring DCBID. (See Declaration of Daniel M. Whitley,  
3 ¶¶ 6, 8 and 9.) The successor DCBIDs had to be “renewal” BIDS under Section 36660 because funds  
4 were always transferred to the successor BID.

5 Thus, every DCBID except for the very first is a “renewal” of the first DCBID, and each  
6 “renewed” DCBID is an entirely new and different entity than the expired BID. A “renewed” BID,  
7 just like a “new” BID, is “established” upon Motion of the City Council. (Streets and Highways Code  
8 § 36660(a).) It did not exist prior to that action by the City. Various rules apply to any unused  
9 revenues from the expired BID. (Streets and Highways Code § 36660(b).) All of this makes sense  
10 only if the expired BID and the successor BID are entirely different entities; otherwise, there would  
11 be no need to “transfer” funds as the BID simply “continues” to exist as Petitioners argue. The BIDs  
12 “continue” in the sense that a series of successor BIDS have continued to provide similar services to a  
13 similar constituents over the years, but do not “continue” in the sense that they are a single entity.  
14 They “continue” to provide services in the sense that the President of the United States has  
15 “continued” to provide “President” services, although no individual President has “continued.”

16 This language is perfectly clear and unambiguous. A number of BIDs have formed over the  
17 years all called the “DCBID,” and a DCBID was expected to exist in the future after the 2013 DCBID  
18 expired. The Settlement Agreement limits itself only to assessments made by the DCBID “adopted  
19 by ordinance of the City Council on June 19, 2012,” regardless of whether any DCBID is considered  
20 “renewed” or newly established.

21 Thus, the language limiting the Settlement Agreement to the DCBID adopted by City Council  
22 on June 19, 2012, is a clean and simple way to limit the scope of the settlement to the single five-year  
23 term of the 2013 DCBID. Adding further language ending the City’s obligations on December 31,  
24 2017, as Petitioners now argue for, is superfluous and would have made the Settlement Agreement  
25 ambiguous and confusing (or more ambiguous and confusing, if some ambiguity does exist). What  
26 happened if the 2013 DCBID was disestablished and a new BID created? What happened if a new  
27 BID was set for vote before December 31, 2017? What would have happened if the 2018 DCBID  
28

1 had begun collecting assessments in 2017? These are clearly settled by the agreement as written, but  
2 ambiguities would arise if the agreement had been written as Petitioners now suggest.

3 Moreover, Petitioners' "renewal" argument requires a reader to ignore the language in Recital  
4 ¶ 2 limiting the assessments to those set forth in the 2012 Engineer's Report and the 2012 District  
5 Plan. The assessments starting in 2018 are **not** set forth in those documents, and so the City is not  
6 obliged to pay assessments relating to the 2018 DCBID regardless of whether it is a "renewal."

7 **C. THE SETTLEMENT AGREEMENT WAS JOINTLY DRAFTED AND CANNOT**  
8 **BE CONSTRUED AGAINST THE CITY.**

9 There is no basis to find that the City was the sole drafter of the Settlement Agreement and so  
10 no basis to construe any ambiguities against the City. A contract cannot be construed against either  
11 party when it results from joint drafting by both parties. (*Mitchell v. Exhibition Foods* (1986) 184  
12 Cal. App. 3d 1033, 1042.) As Petitioners own evidence shows, the City created a first draft of the  
13 agreement and then provided an opportunity, and indeed begged, for Petitioners to make any changes  
14 they deemed necessary. Should Petitioners have wanted the agreement to apply to "renewed"  
15 DCBIDs, regardless of their dates of adoption, Petitioners should have asked for such language in the  
16 agreement. This jointly-drafted settlement agreement that cannot be construed against either party.

17 If anything the Court should construe any ambiguities in the Settlement Agreement in favor of  
18 the City. An ambiguous contract term should be interpreted in favor of the party the term would most  
19 benefit. (*Mitchell* at 1042-1043.) Here, the Settlement Agreement limited the City's obligations to  
20 assessments made with respect to the 2013 DCBID. As in *Mitchell*, this term has far greater benefit  
21 to the City than to Petitioners. These provisions could only benefit the City, as they limit the City's  
22 obligations but leave Petitioners free to challenge future assessments if they wish. No court should  
23 construe a contract to last "forever" without some explicit language to that effect.

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